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[REDACTED]

**STATE OF WISCONSIN**  
**Division of Hearings and Appeals**

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In the Matter of

Milwaukee Enrollment Services, Petitioner

DECISION

v.

[REDACTED], Respondent

FOF/167244

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**PRELIMINARY RECITALS**

Pursuant to a petition filed July 14, 2015, under Wis. Admin. Code §HA 3.03, and see, 7 C.F.R. § 273.16, to review a decision by the Milwaukee Enrollment Services to disqualify [REDACTED] from receiving FoodShare benefits (FS) for a period of one year, a hearing was held on August 24, 2015, at Milwaukee, Wisconsin.

The issue for determination is whether the Respondent committed an Intentional Program Violation (IPV).

NOTE: At the request of the agency, judicial notice is being taken of the plea agreement in case [REDACTED]  
[REDACTED]

Further, the record was held open to give the agency an opportunity to provide additional information concerning the Respondent's EBT card history. On August 27, 2015, the agency representative submitted an e-mail indicating that the Respondent did not have any additional cards issued for the period of August 2010 to January 2013. It has been marked as Exhibit 10 and entered into the record.

There appeared at that time and place the following persons:

**PARTIES IN INTEREST:**

**Petitioner:**

Department of Health Services  
Division of Health Care Access and Accountability  
1 West Wilson Street, Room 651  
Madison, Wisconsin 53703

By: Jessie Dunn, Income Maintenance Specialist Advanced  
Milwaukee Enrollment Services  
1220 W. Vliet St., Room 106  
Milwaukee, WI 53205

**Respondent:**

[REDACTED]  
[REDACTED]  
[REDACTED]

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## ADMINISTRATIVE LAW JUDGE:

Mayumi M. Ishii  
Division of Hearings and Appeals

**FINDINGS OF FACT**

1. On January 27, 2011, the Respondent signed an application summary, indicating that the information she provided was true and correct. The application summary warned the Respondent that she could be disqualified from the FoodShare program if she provided false information or otherwise broke the rules. (Exhibit 8)
2. On September 14, 2011, the Respondent completed a Six Month Report Form. (Exhibit 6)
3. The Respondent received FoodShare benefits, in the amount of \$469.00 on January 14, 2012, and on February 14, 2012. (Exhibit 4, pgs. 11 and 12)
4. On January 15, 2012, the Respondent's EBT card ending in 7433 was used at John Henry Distribution to make a \$269.00 "purchase". It was used again on February 14, 2012, to make a \$260.00 "purchase" at John Henry Distribution. (Exhibit 9)
5. From June 2010 through January 2013, John Henry Distribution was no longer selling food, but was instead purchasing FoodShare benefits for a fraction of face value. (Plea Agreement in Federal District Court Case [REDACTED], pg. 5 )
6. On July 20, 2015, Milwaukee Enrollment Services (the agency) prepared an Administrative Disqualification Hearing Notice, alleging that the Respondent violated the rules of the FoodShare Program by trafficking \$565.00 in benefits between March 3, 2011 and May 11, 2011. (Exhibit 1)

**DISCUSSION***What is an IPV?*

An IPV is defined at 7 C.F.R. §273.16(c) as intentionally: making a false or misleading statement or misrepresenting; concealing or withholding facts; or committing any act that constitutes a violation of the Food Stamp Act, federal regulations or any Wisconsin statute relating to the use, presentation, transfer, acquisition, receipt or possession of food stamp coupons or an authorization to participate (ATP) card.

The Department's written policy restates federal law, below:

**3.14.1 IPV Disqualification**

7 CFR 273.16

A person commits an Intentional Program Violation (IPV) when s/he intentionally:

1. makes a false or misleading statement, or misrepresents, conceals or withholds facts; or
2. commits any act that constitutes a violation of the Food Stamp Act, the Food Stamp Program Regulations, or any Wisconsin statute for the purpose of using, presenting, transferring, acquiring, receiving, possessing or trafficking of FoodShare benefits or QUEST cards.

An IPV may be determined by the following means:

1. Federal, state, or local court order,
2. Administrative Disqualification Hearing (ADH) decision,
3. Pre-charge or pretrial diversion agreement initiated by a local district attorney and signed by the FoodShare recipient in accordance with federal requirements, or
4. Waiver of the right to an ADH signed by the FoodShare recipient in accordance with federal requirements.

*FoodShare Wisconsin Handbook*, §3.14.1.

The agency may disqualify only the individual who either has been found to have committed the IPV or has signed a waiver or consent agreement, and not the entire household. If disqualified, an individual will be ineligible to participate in the FS program for one year for the first violation, two years for the second violation, and permanently for the third violation. However, any remaining household members must agree to make restitution within 30 days of the date of mailing a written demand letter, or their monthly allotment will be reduced. 7 C.F.R. §273.16(b).

### *What is the Agency's Burden of Proof?*

In order for the agency to establish that an FS recipient has committed an IPV, it has the burden to prove two separate elements by clear and convincing evidence. The recipient must have: 1) committed; and 2) intended to commit an intentional program violation per 7 C.F.R. §273.16(e)(6).

"Clear and convincing evidence" is an intermediate standard of proof which is more than the "preponderance of the evidence" used in most civil cases and less than the "beyond a reasonable doubt" standard used in criminal cases.

In Kuehn v. Kuehn, 11 Wis.2d 15, 26 (1959), the court held that:

Defined in terms of quantity of proof, reasonable certitude or reasonable certainty in ordinary civil cases may be attained by or be based on a mere or fair preponderance of the evidence. Such certainty need not necessarily exclude the probability that the contrary conclusion may be true. In fraud cases it has been stated the preponderance of the evidence should be clear and satisfactory to indicate or sustain a greater degree of certitude. Such degree of certitude has also been defined as being produced by clear, satisfactory, and convincing evidence. Such evidence, however, need not eliminate a reasonable doubt that the alternative or opposite conclusion may be true. In criminal cases, while not normally stated in terms of preponderance, the necessary certitude is universally stated as being beyond a reasonable doubt.

*Wisconsin Jury Instruction – Civil 205* is also instructive. It provides:

Clear, satisfactory and convincing evidence is evidence which when weighed against that opposed to it clearly has more convincing power. It is evidence which satisfies and convinces you that "yes" should be the answer because of its greater weight and clear convincing power. "Reasonable certainty" means that you are persuaded based upon a rational consideration of the evidence. Absolute certainty is not required, but a guess is not enough to meet the burden of proof. This burden of proof is known as the "middle burden." The evidence required to meet this burden of proof must be more convincing than merely the greater weight of the credible evidence but may be less than beyond a reasonable doubt.

Further, the *McCormick* treatise states that “it has been persuasively suggested that [the clear and convincing evidence standard of proof] could be more simply and intelligibly translated to the jury if they were instructed that they must be persuaded that the truth of the contention is highly probable.” 2 *McCormick on Evidence* § 340 (John W. Strong gen. ed., 4<sup>th</sup> ed. 1992).

Thus, in order to find that an IPV was committed, the trier of fact must derive from the evidence, a firm conviction that the Petitioner sold her FoodShare benefits, even though there may exist a reasonable doubt that the opposite is true.

### *The Merits of the Agency’s Case*

In the case at hand, Milwaukee Enrollment Services asserts that the Respondent sold her FoodShare benefits to John Henry Distribution in January and February 2012. The Respondent does not dispute the fact that someone sold her FoodShare Benefits to John Henry Distribution. However, the Respondent asserts that she allowed her friend, [REDACTED], to use her EBT card, and that [REDACTED] must have sold the FoodShare benefits to John Henry Distribution on the dates in question. The Respondent testified that she did not realize what [REDACTED] did, because she allowed [REDACTED] to go shopping alone.

The Respondent’s explanation for what happened with her EBT card is not credible. It is difficult to believe that the Respondent, who is herself dependent upon public assistance to support her family, would allow her friend to use \$529 in benefits in just two months. Even if I found the Respondent’s testimony to be credible, she could still be found in violation of the FoodShare rules.

Wis. Stats. §49.795 describes various food stamp/Food Share offenses, and under subsection 3 states that, “no person may knowingly issue food coupons to a person who is not an eligible person...”

7 CFR §271.5(b)(1) states that individuals who knowingly transfer coupons, authorization cards, or access devices, between \$100 and \$5000 in value, in any manner contrary to the Food and Nutrition Act of 2008, is guilty of a felony.

The only people in the Respondent’s food unit / household were the Respondent and two minor children under the age of 11. (See Exhibit 4 – Case Member History) If the Respondent gave [REDACTED] her EBT card and pin number so that [REDACTED] could go shopping, the Respondent likely violated Wis. Stats. §49.795(3) and 7 CFR §271.5(b)(1).

There is a general rule that a person is presumed to know and intend the probable and natural consequences of his or her own voluntary words or acts. See *John F. Jelke Co. v. Beck*, 208 Wis. 650 (1932); 31A C.J.S. Evidence §131. Intention is a subjective state of mind to be determined upon all the facts. *Lecus v. American Mut. Ins. Co. of Boston*, 81 Wis.2d 183 (1977). There is nothing in the record to rebut the presumption that the Respondent intentionally sold her benefits to John Henry Distribution.

### **CONCLUSIONS OF LAW**

The Respondent committed an intentional program violation (IPV) by trafficking her benefits with John Henry Distribution between January 15, 2012 and February 14, 2012.

**THEREFORE, it is**

**ORDERED**

That the IPV for case number [REDACTED] is sustained and that the Respondent is hereby ineligible to participate in the FoodShare program for a period of one year, effective the first month following the date of receipt of this decision.

**REQUEST FOR A REHEARING**

You may request a rehearing if you think this decision is based on a serious mistake in the facts or the law or if you have found new evidence that would change the decision. Your request must be **received within 20 days after the date of this decision**. Late requests cannot be granted.

Send your request for rehearing in writing to the Division of Hearings and Appeals, 5005 University Avenue, Suite 201, Madison, WI 53705-5400 **and** to those identified in this decision as "PARTIES IN INTEREST." Your rehearing request must explain what mistake the Administrative Law Judge made and why it is important or you must describe your new evidence and explain why you did not have it at your first hearing. If your request does not explain these things, it will be denied. See also, 7 C.F.R. sec. 273.16(e)(4) for the specific time limits for claiming good cause for missing the scheduled hearing.

The process for requesting a rehearing may be found at Wis. Stat. § 227.49. A copy of the statutes may be found online or at your local library or courthouse.

**APPEAL TO COURT**

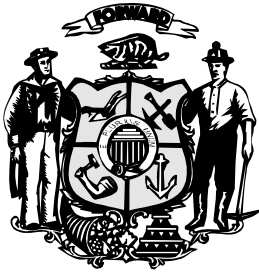
You may also appeal this decision to Circuit Court in the county where you live. Appeals must be filed with the Court **and** served either personally or by certified mail on the Secretary of the Department of Health Services, 1 West Wilson Street, Room 651, Madison, Wisconsin 53703, **and** on those identified in this decision as "PARTIES IN INTEREST" **no more than 30 days after the date of this decision** or 30 days after a denial of a timely rehearing (if you request one).

The process for Circuit Court Appeals may be found at Wis. Stat. §§ 227.52 and 227.53. A copy of the statutes may be found online or at your local library or courthouse.

Given under my hand at the City of Milwaukee,  
Wisconsin, this 14th day of September, 2015.

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\sMayumi M. Ishii  
Administrative Law Judge  
Division of Hearings and Appeals



**State of Wisconsin\DIVISION OF HEARINGS AND APPEALS**

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The preceding decision was sent to the following parties on September 14, 2015.

Milwaukee Enrollment Services  
Public Assistance Collection Unit  
Division of Health Care Access and Accountability  
[Pamela.Hazley@dhs.wisconsin.gov](mailto:Pamela.Hazley@dhs.wisconsin.gov)